

**MOHD FADZLYNIZAN MOHD NASIR v. TIMBALAN
MENTERI DALAM NEGERI & ANOR**

HIGH COURT MALAYA, SHAH ALAM
NOORIN BADARUDDIN J

[CRIMINAL APPLICATION NO: 44-38-01-2020]

7 SEPTEMBER 2020

CRIMINAL PROCEDURE: *Habeas corpus – Preventive detention – Challenge against legality of detention – Grounds for – Failure by respondents to provide copy of applicant’s own statement recorded pursuant to s. 5 of Dangerous Drugs (Special Preventive Measures) Act 1985 (‘Act’) – Denial of receipt of applicant’s letters of request and existence of statements – Whether denial sufficiently proved – Whether detention order showed applicant involved with substantial body of persons – Whether there was non-compliance with mandatory procedure and pre-requisite of Act – Federal Constitution, arts. 149 & 151(1)(a) – Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3(1), 6(1) & 9(2)(b)(ii)*

The applicant was arrested under s. 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (‘Act’) and his statement was recorded by the investigating officer pursuant to s. 4 of the Act. The arrest and investigations reports relating to the applicant was subsequently handed to the inquiry officer (‘IO’) at the Home Ministry, who then conducted physical investigation and submitted a report to the Deputy Home Minister. The Deputy Minister issued a detention order against the applicant under s. 6(1) of the Act for a period of two years. Hence, this application by the applicant for a writ of *habeas corpus* against the legality of the detention order. The applicant contended that the respondents had failed and/or neglected and/or refused to provide the applicant with a copy of his own statement recorded by the IO pursuant to s. 5 of the Act and had wrongfully withheld the applicant’s right to access relevant and material evidence for him to prepare and present a full and comprehensive representation to the Advisory Board. It was thus contended that the respondents failed to comply with the requirements under art. 151(1)(a) of the Federal Constitution (‘FC’) read together with s. 9(2)(b)(ii) of the Act. The applicant also alleged non-compliance with art. 149 of the FC read together with the preamble of the Act, contending that the detention order failed to show and/or allege that the applicant was part of a ‘substantial body of persons’ or that the applicant was involved in a ‘syndicated’ drug trafficking ring. The respondents, amongst others, (i) denied the receipt of the applicant’s request for his recorded statement; (ii) stated that there was, in fact, no recorded statement taken by the IO; and (iii) that there was no requirement under the law to provide statement recorded by the IO of the Ministry. Whereas, on the allegation of non-compliance with art. 149 of the FC read together with the preamble of the Act, the respondents took the position that there is nothing in the preamble to the Act stating that the related act of the trafficking in dangerous drugs must be committed in a substantial body of persons.

A Held (allowing application):

- (1) The documentary proof showed that a request was made and addressed to the Minister of Home Affairs directly and to the IO *via* 'Bahagian Keselamatan dan Ketenteraman Awam' of the Ministry for the supply of the applicant's own recorded statement given to and recorded by the IO. Both letters were sent *via* AR registered post which were stamped 'Terima' or duly received by the registry office of the Ministry and also sent *via* facsimile. There was no affidavit affirmed by any personnel from the 'Bahagian Keselamatan dan Ketenteraman Awam' of the Ministry to deny receipt of the letters. The receipt of the letters *via* facsimile was also not denied and neither was it denied that the facsimile number did not belong to the Ministry or any of its department. Therefore, pursuant to s. 12 of the Interpretation Acts 1948 and 1967, the presumption that the letters were effected applies. The respondents had failed to prove anything to the contrary as to the receipt of the letters. (paras 33-36)
- (2) Based on the facts stated by the IO in her affidavit, the applicant's averment that he gave a statement to the IO was true. The IO had exercised her discretion to procure and receive evidence in writing from the appellant. Hence, the applicant's recorded statement existed and the same was in the possession of the IO and/or respondents. (para 39)
- (3) The provision of s. 9(2)(b)(iii) of the Act allows for the applicant to be furnished 'with a statement in writing of such other particulars, if any, he may in the opinion of the Minister reasonably require in order to make his representations against the order to the Advisory Board'. Therefore, the respondent's argument that there was no requirement under s. 9 of the Act for the applicant's statement to be supplied could not stand. The application was in fact made by the applicant to the Minister but the position taken or the opinion of the Minister was nowhere to be found. In the circumstances, the applicant had successfully challenged the validity of the detention order against him and there existed non-compliance to the mandatory procedure provided by the Act and the FC. (paras 41 & 46)
- (4) The wordings 'and further similar action is being threatened by a substantial body of persons both inside and outside Malaysia' in the preamble of the Act indicate that the Act was enacted to safeguard public order from the threat of drug traffickers made up of a substantial body of persons operating in the trafficking of dangerous drugs. Activities of a single person in the trafficking of dangerous drugs cannot be deemed to be within the ambit of the Act. Therefore, the preventive detention allowed under the Act must be against person/persons who had been associated with a substantial body of persons in his activity relating to or involving the trafficking in of dangerous drugs. (para 54)

- (5) There was no statement or indication or manifestation as to the source of drug supply obtained by the applicant or the drug suppliers whom the applicant was involved with. The detention order and allegation of facts, *ex facie* did not reflect that the applicant was involved with a substantial body of persons' or that the applicant was involved in a syndicated drug trafficking ring. Since activities of a single person cannot be deemed to be within the ambit and scope under the Act, the allegation of the facts fell short of the pre-requisite stipulated under art. 149 of the FC read together with the preamble of the Act and was hence defective. (paras 57 & 58) A
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- (6) The applicant had thus succeeded in challenging the validity of the detention order against him. There existed non-compliance with the mandatory procedure and pre-requisite provided in the Act and the FC. The applicant's detention was unlawful. (para 59) C

Case(s) referred to:

- Chua Kian Voon v. Menteri Dalam Negeri Malaysia & Ors* [2020] 1 CLJ 747 FC (*refd*) D
- Danaharta Urus Sdn Bhd v. Kekatong Sdn Bhd* [2004] 1 CLJ 701 FC (*refd*)
- Mohammad Azanul Haqimi Tuan Ahmad Azahari v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2019] 8 CLJ 465 FC (*refd*)
- Mohd Faizal Haris v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] 4 CLJ 613 FC (*refd*)
- Muhammad Jailani Kasim v. Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors* [2006] 4 CLJ 687 FC (*refd*) E
- Poh Chin Kay v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor And Other Appeals* [1990] 1 LNS 26 SC (*refd*)
- Re Datuk James Wong Kim Min; Minister Of Home Affairs, Malaysia & Ors v. Datuk James Wong Kim Min* [1976] 1 LNS 129 FC (*refd*)
- SK Tangakaliswaran Krishnan v. Menteri Dalam Negeri, Malaysia & Ors* [2009] 6 CLJ 705 FC (*refd*) F
- Yeap Hock Seng v. Minister of Home Affairs Malaysia* [1975] 2 MLJ 279 (*refd*)

Legislation referred to:

- Dangerous Drugs Act 1952, First Schedule Part III
- Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3(1), 4, 5(4), 6(1), 9(2)(b)(iii), 14 G
- Federal Constitution, arts. 149, 151(1)(a)
- Interpretation Acts 1948 and 1967, ss. 12, 15
- For the applicant - Danial Amir & Zafran Zafri Mohd Zaini; M/s Zafri & Partners*
- For the respondents - Norazlin Mohd Yusoff; FC* H
- Reported by S Barathi*
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JUDGMENT

Noorin Badaruddin J:

[1] This is an application for a writ of *habeas corpus* against the legality of the detention order (“the detention order”) made by the Deputy Home Minister (“Deputy Minister”) under s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (“the Act”). The applicant was ordered to be detained for a period of two years at the Pusat Pemulihan Akhlak Batu Gajah, Perak (“PPA”) commencing 21 November 2019.

Salient Facts

[2] On 30 September 2019, the applicant was arrested under s. 3(1) of the Act.

[3] On 30 September 2019, Inspector Jaswit Kaur a/p Ranjit Singh, the investigating officer from the Narcotic Criminal Investigation Department, Selangor Contingent Police Headquarters had recorded the applicant’s statement pursuant to s. 4 of the Act. The police officer was assisted by Detective Corporal Ahmad Rasidi bin Hj Radzali.

[4] The applicant is stated to have been involved with trafficking methamphetamine, a type of dangerous drugs listed under the First Schedule, Part III of the Dangerous Drugs Act 1952.

[5] On 24 October 2019, Nor Azah binti Kasran, the inquiry officer (“the IO”) at the Home Ministry, received the arrest and investigation reports relating to the applicant from Insp Jaswit Kaur.

[6] On 29 October 2019, the IO had conducted physical investigation and a report was submitted to the Deputy Minister pursuant to s. 5(4) of the Act.

[7] On 21 November 2019, the Deputy Minister issued the detention order against the applicant under s. 6(1) of the Act for a period of two years commencing 21 November 2019.

[8] On 21 November 2019, ASP Mohd Ridzuan bin Md Salleh had served on the applicant the original copy of the detention order, statement of facts and three copies of Form 1.

[9] On 22 November 2019, the applicant was admitted to the PPA. On the same day, Zakaria bin Jusoh, being the officer in charge (“the OIC”) of the PPA further explained about the detention order, grounds for the detention and statement of facts and the applicant’s right to make representation to the Advisory Board (“the Board”).

[10] On 23 January 2020, Suzilawati binti Suhaimi, the prison warder has served a notice of hearing of representation to the applicant.

[11] On 12 February 2020, the Board convened and heard the applicant's representation. A

[12] On 12 February 2020, after having considered the representation made by the applicant, the Board submitted its recommendation to the Yang Di-Pertuan Agong.

[13] On 10 March 2020, the recommendation by the Board was assented to by the Yang Di-Pertuan Agong. B

The Issues

[14] Three issues were raised by the applicant. However, only two issues were pursued at the hearing of the application. The issues are as follows: C

- (i) Non-compliance of art. 151(1)(a) of the Federal Constitution read together with s. 9(2)(b)(iii) of the Act;
- (ii) Non-compliance of art. 149 of the Federal Constitution read together with the preamble to the Act. D

The Law

[15] In an application for a writ of *habeas corpus*, a detention order can be vitiated by non-compliance of the procedures laid down in the Act. The court must look at the grounds forwarded by the applicant and determine whether the grounds forwarded are one that falls within the meaning of procedural non-compliance or otherwise. To determine the question, the courts should look at the provisions of the law or the rules that lay down the procedural requirements. It is not for the courts to create procedural requirements as it is not the function of the courts to make law or rules. E F

[16] It is trite that the grant of *habeas corpus* is as of right and not in the discretion of the court. In *Yeap Hock Seng v. Minister of Home Affairs Malaysia* [1975] 2 MLJ 279, Abdoolcader J (as he then was) had stated the followings:

The grant of *habeas corpus* is as of right and not in the discretion of the court as in the case of such extraordinary legal remedies as *certiorari*, prohibition and *mandamus*. It is a writ of right against which no privilege of person or place can be of any avail (*R v. Pell and Offly* ER 720). The heavy musketry of the law will always be brought to bear upon any suggestion of unlawful invasion or infringement of the personal liberty of an individual in the form of *habeas corpus* and kindred orders where necessary to grant relief when warranted. It was aptly put in the American case of *State ex rel Evans v. Broaddus* 245 Mo 123 140 that at least in times of peace every human power must give way to the writ of *habeas corpus* and no prison door is stout enough to stand in its way. G H

[17] It is settled law that on an application for a writ of *habeas corpus*, the burden of satisfying the court that the detention is lawful lies throughout on the detaining authority (*SK Tangakaliswaran Krishnan v. Menteri Dalam Negeri*, I

A *Malaysia & Ors* [2009] 6 CLJ 705). The fundamental principle was earlier stated by the Supreme Court in *Poh Chin Kay v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor And Other Appeals* [1990] 1 LNS 26; [1990] 2 MLJ 297 as follows:

B We are fully conscious of the government effort to combat the drug menace in this country. But there is a fundamental principle involved here. The power to detain a person without trial cannot be exercised by inference. The power must be expressed, clear and unequivocal. Where detention law and liberty of individuals are concerned, this is the most correct approach for the courts to apply. There is hardly any need to repeat what has been said on the principle to be followed by the courts in dealing with detention law.

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[18] The general rule is that a writ of *habeas corpus* must be directed against the current detention order. Any prior illegality ceased to be a subject matter of the inquiry. The general rule was stated by the Federal Court in *Mohd Faizal Haris v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] 4 CLJ 613 as follows:

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E It must be observed that in view of the subjective nature of the exercise of discretion by the Minister in ordering detention as enunciated in *Karam Singh v. Menteri Hal Ehwal Dalam Negeri, Malaysia* [1969] 1 LNS 65; [1969] 2 MLJ 139 the court is not to concern itself with the vagueness, sufficiency or relevancy of the grounds of detention. Thus even if the report of investigation was prepared as the result of an illegal arrest the weight to be attached to it is a matter exclusively within the purview of the Minister. The court will not be concerned with the use of the report of investigation by the Minister. The consideration of a statement made by an illegally detained person cannot therefore be prohibited. The result is that the legality of the detention of a person under s. 3(2) is not a condition precedent to the making of a detention order against him under s. 6(1).

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G The corollary is that a detention order can be made against a person under s. 6(1) even when his detention under s. 3(2) was irregular. The general rule that a writ of *habeas corpus* must be directed against the current order of detention therefore applies where a detention under s. 6(1) has been made subsequent to an arrest and detention under s. 3(1) and (2). It follows that where a detention order has been made under s. 6(1) the writ of *habeas corpus* must be directed only against that order even if the earlier arrest and detention are irregular. This view is supported by *Barnardo v. Ford* [1892] AC 326 where Lord Halsbury said that he could not agree to the proposition that if a court is satisfied that illegal detention has ceased before application for the writ has been made, nevertheless the writ might issue in order to vindicate the authority of the court against a person who has once, though not at the time of the issue of the writ, unlawfully detained another or wrongfully parted with the custody of another. Thus any irregularity in a detention order made under

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s. 3(2) when it has been superseded by one under s. 6(1) is not a relevant matter for consideration. In this regard *The Law of Habeas Corpus*, 2nd edn, by RJ Sharpe says at p 179:

It has been held consistently that the relevant time at which the detention of the prisoner must be justified is the time at which the court considers the return to the writ. This rule means that nothing which has happened before the present cause of detention took effect will be relevant to the issue before the court, unless by reason of some special consideration arising from the particular proceedings.

And at p 186:

On the present state of the law, in almost every instance, the relevant time at which the detention is to be justified is the time at which the court considers the case. Prior illegality will not be relevant unless by reason of some special rule derived from the particular nature of the proceedings involved. Therefore a prior illegality which has ceased cannot be the subject matter of inquiry.

[19] However, in *Muhammad Jailani Kasim v. Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors* [2006] 4 CLJ 687, the Federal Court had held that any statutory pre-condition to the making or leading to the making of the detention order could be inquired by the court and that if the detention order is procured by irregular steps, the detention order can be set aside. The Federal Court held:

[8] It follows that if a detention is procured by steps which are not regular the court is empowered to set aside the detention order. It means that every step which is necessary for the making of a detention order is subject to review by the court. The effect of a breach of such procedural requirements had been considered in a number of cases. See, for example, *Puvaneswaran v. Menteri Hal Ehwal Dalam Negeri Malaysia & Anor* [1991] 2 CLJ 1199; [1991] 3 CLJ (Rep) 649; *Low Teng Hai v. Menteri Dalam Negeri, Malaysia & Others* [1992] 2 CLJ 1037; [1992] 2 CLJ (Rep) 816 and *Aw Ngoh Leang v. Inspector General of Police* [1993] 1 CLJ 373. It has been recognised in these cases that a procedural requirement may be mandatory or directory. A mandatory requirement is one that goes to the root of the matter and is of direct relevance to the detention order. The breach of a mandatory requirement will render the detention order invalid without the need to establish any prejudice. The breach of a procedural requirement which is directory will not be significant provided that there is substantial compliance with the rules with no prejudice having been suffered by the detainee. However it must be observed that the power of the court to intervene is limited to only matters of compliance with procedural requirements by s. 11C(1) of the Act which reads as follows:

- A There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or decision made by the Yang di-Pertuan Agong or the Minister in the exercise of their discretionary power in accordance with this Act, save in regard to any question on compliance with any procedural requirement in this Act governing such act or decision.
- B It is clear that the section restricts judicial review to only questions on compliance with any procedural requirement governing any act done or decision made by the Yang di-Pertuan Agong or the Minister in the exercise of their discretionary power. Such procedural requirements can only be ones that will go to the root of the matter and be of direct relevance to the making of the detention order. The section only refers to a question of compliance with procedural requirements without subjecting it to any prejudice having been suffered. The test, therefore, in determining whether a breach can be subjected to judicial review is whether it is in compliance with any procedural requirement governing any act done or decision made by the Yang di-Pertuan Agong or the Minister in the exercise of their discretionary power in accordance with the Act without the need to establish any prejudice. Such a determination will be greatly facilitated, though not decisively, by a consideration of the effect of the statutory provision that has been breached, that is to say, whether it is mandatory or directory in nature.
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- E [9] It must be reiterated that the reports that the Minister must consider are only a prerequisite to the making of a detention order under s. 6(1) of the Act. Accordingly, the short answer to the reliance of the learned Deputy Public Prosecutor on the judgment of this court in *Mohd Faizal bin Haris v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] 4 CLJ 613 is that the *ratio decidendi* of that case does not deal with defects in the making of the current detention order but with the illegality of the prior detention. Thus it only renders irrelevant defects in a prior detention when the current detention order is lawful. The challenge of the appellant in this case is not as to the validity of the prior arrest but as to the regularity of the current detention order in the light of defects in the procedure leading to the making of the order. The authority relied on cannot therefore be used as a shield to hide from procedural defects in the making of the current detention order. The reports specified in s. 6(1)(a) and (b) of the Act play a very significant role in the making of a detention order against a person. The Minister must consider these reports before making a detention order. They are therefore pre-conditions to the exercise of power under s. 6(1) of the Act. They are part of the decision-making process and not the decision itself. Thus they amount to procedural requirements governing the exercise of discretion by the Minister in making a detention order within the meaning of s. 11C of the Act. A breach of this requirement is therefore subject to judicial review. The case of *The Reverend Thomas Pelham Dale's case* [1881] 6 QBD 376 cited in *Re Tan Boon Liat* [1977] 1 LNS 110; [1977] 2 MLJ 108 referred to earlier makes it clear that the steps taken to detain a person must be
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entirely regular. Thus if a report must be considered before making a detention order it must be one that is in regular form. It follows that the report of the inquiry officer that the Minister must consider under s. 6(1)(b) of the Act must be one that has satisfied the requirements of s. 5 of the Act. Since there is no evidence of compliance with s. 5 of the Act in this case the report under s. 6(1)(b) of the Act cannot be said to have been made in accordance with law. Accordingly, the detention order made against the appellant cannot be said to be one that has been validly made.

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[20] It could be gleaned from the above authorities that there is an interplay of various provisions in relation to the statutory procedural requirements stipulated in the Act which must be strictly complied with by both the investigating and the detaining authorities.

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[21] Since this is a matter concerning personal liberty, an applicant applying for a writ of *habeas corpus* is entitled to avail himself of any technical defects which may invalidate the order in which deprives him of his liberty (*Re Datuk James Wong Kim Min; Minister Of Home Affairs, Malaysia & Ors v. Datuk James Wong Kim Min* [1976] 1 LNS 129; [1976] 2 MLJ 245 per Lee Hun Hoe CJ (Borneo)).

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[22] In addition, it is also for the respondent to prove that the constitutional and statutory safeguards embodied in art. 151 of the Federal Constitution and s. 6(1) of the Act are strictly complied with.

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The First Issue

Summary Of The Applicant's Submission

[23] It is the applicant's submission that the respondents had failed and/or neglected and/or refused to provide the applicant a copy of his own statement recorded by the IO pursuant to s. 5 of the Act. It is further contended that the respondents have wrongfully withheld the applicant's right to access relevant and material evidence for him to prepare and present a full and comprehensive representation to the Board. It is submitted that therefore, the respondents have failed to comply with the requirements stipulated in art. 151(1)(a) of the Federal Constitution read together with s. 9(2)(b)(iii) of the Act.

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Summary Of The Respondents' Submission

[24] In response to the first issue raised herein, the respondents argue that there is no requirement for them to supply the applicant's recorded statement. It is contended that in actual fact, there was no statement recorded by the IO since she was only conducting physical investigation on the applicant pursuant to s. 5 of the Act. According to the respondents, s. 5 of the Act stipulates that it is only in the IO's discretion to procure and receive all evidence whether oral or in writing and that nowhere in the same

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- A provision necessitate a recorded statement to be taken by the IO. It is therefore submitted that in applying for his recorded statement to be made available to him, the applicant is adding a new procedural requirement which is not the function of the court to create. It is further submitted that since there is no such requirement under the law specifically s. 9 of the Act for the recorded statement of a detenu to be supplied to the applicant, no procedural non-compliance had been occasioned herein.

- [25] In addition, the respondents seek to distinguish the facts in this case with the facts in *Chua Kian Voon v. Menteri Dalam Negeri Malaysia & Ors* [2020] 1 CLJ 747 ("*Chua Kian Voon*"). According to the learned Federal Counsel for the respondents, the recorded statement referred to by the Federal Court in that case was statement taken by the police investigating officer and not statement recorded by the inquiry officer of the Home Ministry as requested by the applicant herein.

- [26] Apart from the above contention, the respondents had denied receiving the applicant's request for his recorded statement.

Findings

- [27] In support of his application herein, the applicant at para. 22 of his affidavit in support stated that he had instructed his solicitors to request for his statements recorded by the police and the IO. The applicant avers as follows:

22. Saya turut menyatakan bahawa saya telah tidak dibekalkan dengna dokumen-dokumen yang lengkap bagi tujuan persediaan saya untuk menjalankan representasi di hadapan Lembaga Penasihat. Dalam perkara ini, saya menegaskan bahawa saya telah mengarahkan peguamcara saya untuk memohon/mendapatkan sesalinan rakaman percakapan saya yang telah direkodkan oleh pihak polis dan pihak pegawai inkuiri, namun sehingga tarikh affidavit ini diikrarkan, tiada apa-apa maklumbalas dari pihak Respoden berkenaan permohonan saya ini. Saya sesungguhnya percaya dan menyatakan keenggan dan/atau kegagalan membekalkan dokumen-dokumen yang dipohon telah menafikan hak saya untuk membuat persediaan yang penuh dan lengkap bagi tujuan membentangkan representasi saya di hadapan Lembaga Penasihat kelak.

- [28] In response to the applicant's averment, the respondents through the IO Nor Azah binti Kasran stated, that in the course of conducting the physical investigation, she had given the applicant the opportunity to give his statement without any compulsion and had explained to the applicant that his statement would bind him in the future. According to the IO upon completing the taking of the applicant's statement, she had again informed the applicant of his statement and had confirmed the same. The relevant parts of the IO's averments are as follows:

7. Pada 29-10-2019, jam 9.20 pagi saya telah menjalankan siasatan fizikal terhadap Pemohon di ibu Pejabat Polis Kontinjen, Pulau Pinang menurut seksyen 5(2) Akta tersebut. Di dalam siasatan tersebut, *Pemohon telah hadir dan Pemohon juga telah diberi peluang untuk memberikan keterangan tanpa sebarang paksaan.*

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10. Semasa siasatan, saya telah bertanya kepada Pemohon sama ada Pemohon mengetahui tujuan siasatan ini dilakukan. Pemohon telah memaklumkan kepada saya bahawa Pemohon mengetahui tujuan siasatan ini dilakukan. Walaubagaimana pun, saya tetap menerangkan kepada Pemohon bahawa tujuan siasatan ini dijalankan untuk mendapatkan keterangan daripada Pemohon sendiri, berkenaan pertuduhan yang dibuat ke atas Pemohon berdasarkan seksyen 5(2) dan 5(3) Akta tersebut. *Saya juga telah menerangkan keterangan yang Pemohon berikan dalam siasatan ini akan mengikat Pemohon pada masa akan datang.* Pemohon juga telah menyatakan akan memberi keterangan dengan rela hati dan tanpa sebarang ugutan dan paksaan. Saya juga sesungguhnya menegaskan bahawa *setelah selesai mengambil keterangan Pemohon, saya telah memaklumkan semula keterangan Pemohon kepada Pemohon dalam Bahasa Malaysia. Pemohon kemudiannya memaklumkan kepada saya bahawa Pemohon memahami dan mengesahkan semua keterangan yang telah dimaklumkan kepada Pemohon.* Sepanjang masa siasatan tersebut, Pemohon telah diberi peluang untuk memberikan keterangan tanpa menggunakan sebarang ugutan dan paksaan.

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(emphasis added)

[29] In regards to the applicant's request for his statement, the IO denied receiving any letters from the applicant's solicitors. The IO affirmed as follows:

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16. Merujuk kepada perenggan 22 dalam Afidavit Pemohon, *saya menafikan dakwaan Pemohon tersebut dan sesungguhnya menegaskan bahawa Bahagian Keselamatan, Kementerian Dalam Negeri tidak pernah menerima surat permohonan daripada peguam Pemohon untuk memohon/mendapatkan sesalinan rakaman percakapan Pemohon yang telah direkodkan oleh Pegawai Inkuiri Kementerian Dalam Negeri. Saya juga ingin menjelaskan bahawa saya tidak pernah mengambil rakaman percakapan Pemohon, tetapi saya telah mengambil keterangan Pemohon.* Oleh itu, tiada salinan rakaman percakapan sepertimana dakwaan Pemohon. Saya menegaskan bahawa segala keperluan undang-undang mengenai siasatan di bawah Akta tersebut telah dipatuhi.

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(emphasis added)

[30] The applicant then replied and had attached his solicitors' letters requesting for his statement on his behalf. The letters are exhibited as "MF1". The applicant avers as follows:

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- A 6. Saya merujuk perenggan 7,9,10,11, 12 dan 16 AJ NOR AZAH dan mengaku setakat mana bahawa deponent telah berjumpa saya bagi tujuan menjalankan inkuiri ke atas diri saya. Saya menegaskan bahawa keterangan dan/atau percakapan yang telah saya berikan telah direkodkan oleh deponent pada tarikh perjumpaan tersebut. Dalam perkara ini, saya sesungguhnya dan sesuci hatinya menegaskan bahawa:
- B a) Saya telah mengarahkan peguambela saya untuk membuat satu surat permohonan bagi tujuan mendapatkan sesalanan keterangan diri saya yang telah direkodkan oleh Pegawai Inkuiri;
- C b) Saya telah dimaklumkan oleh peguambela saya bahawa surat permohonan in telah dialamatkan terus kepada pihak YB Menteri Dalam Negeri dan juga kepada Bahagian Keselamatan dan Ketenteraman Awam Kementerian Dalam Negeri pada 02.12.2019. Saya juga telah dimaklumkan bahawa surat tersebut telah diterima oleh pihak deponent dan/atau Responden melalui "Pos Berdaftar A.R" pada 04.12.2019. Saya ditunjukkan sesalanan surat permohonan bertarikh 02.12.2019 dan salinan KAD AR Pos Berdaftar yang dilampirkan di sini dan ditandakan sebagai "Ekshibit MF-1".
- D c) Sehingga kini, pihak YB Menteri Dalam Negeri mahupun pihak Responden telah, tanpa sebab, gagal dan/atau enggan dan/atau cuai untuk memberi apa-apa maklumbalas terhadap permohonan sesalanan keterangan yang telah direkodkan oleh Pegawai Inkuiri;
- E d) Berdasarkan Ekshibit MF-1 yang dilampirkan di sini, saya menafikan kenyataan deponent di perenggan 16 AJ NOR AZAH dan percaya bahawa kenyataan tersebut adalah satu kenyataan palsu yang direka bagi tujuan menggagalkan permohonan *habeas corpus* saya ini.
- F [31] The Deputy Minister at para. 4 of his further affidavit in reply dated 23 June 2020 responded to the applicant's reply quoted in the above and maintained the denial of the receipt of exh. "M1". The IO in her further affidavit in reply reiterated the denial of the same.
- G [32] Before this court, there appears to be a different stance taken by the respondents from their position in the case of *Chua Kian Voon*. Hence, the argument made by the learned Federal Counsel for the case to be distinguished. Instead of pleading the protection stipulated under s. 14 of the Act as in *Chua Kian Voon*, in the present matter, the respondents have proffered three main grounds in denying the applicant of his own recorded statement. The three grounds are:
- H i. denial of receipt of exh. "M-1";
- I ii. that there was in fact no recorded statement taken by the IO; and
- iii. that there is no requirement under the law to provide statement recorded by the IO of the Ministry

[33] In examining exh. “M1” and with reference to the respondents’ denial receipt of the same, this court finds that the documentary proof shows that a request was made and addressed to the Minister of Home Affairs directly and to the IO *via* “Bahagian Keselamatan dan Ketenteraman Awam” of the Ministry for the supply of the applicant’s own recorded statement given to and recorded by the IO. Both letters were sent *via* A.R. registered post which were stamped “*Terima*” or duly received by the registry office or “Pejabat Pendaftar Terbuka” of the Ministry on the A.R. cards. The letters were also sent *via* facsimile.

[34] It is observed that there is no affidavit affirmed by any personnel from the “Bahagian Keselamatan & Ketenteraman Awam” of the Ministry to deny any receipt of the letters/exh. “M1”.

[35] It can be argued that the respondents cannot be expected to prove the negative in the sense that what they did not receive cannot be proven by them. However, the argument is untenable because apart from the acknowledgment of receipt of the letters by the Ministry, the respondents did not deny the receipt of the letters/exh. “MF1” *via* facsimile. There is no denial that the facsimile number does not belong to the Ministry or any of its department. Pursuant to s. 12 of the Interpretation Acts 1948 and 1967, the presumption that the letters/exh. “M1” were effected therefore applies. Section 12 of the Interpretation Acts 1948 and 1967 stipulates:

12. Service by post

Where a written law authorises or requires a document to be served by post, then, until the contrary is proved, service:

- (a) shall be presumed to be effected by properly addressing, prepaying and posting by registered post a letter containing the document; and
- (b) shall be presumed to have been effected at the time when the letter would have been delivered in the ordinary course of post.

[36] The respondents failed to prove anything to the contrary as to the receipt of the letters. Bare denial on the part of the respondents calls for an adverse inference against the respondents and lends support to the applicant’s contention that there is a wilful non-disclosure of a contemporaneous evidence solely within the respondents’ custody.

[37] In what seems to be an attempt to circumvent the guidelines laid down by the Federal Court in *Chua Kim Voon*, two-pronged arguments is proffered by the respondents.

[38] The first argument is that there was no statement recorded by the IO as she was conducting physical investigation on the applicant pursuant to s. 5 of the Act which stipulates that it is only in the IO’s discretion to procure and receive all evidence whether oral or in writing and that nowhere in the

- A same provision necessitate a recorded statement to be taken by the IO. However, in reference to paras. 7 and 10 of the IO's affidavit produced in the earlier paragraphs, she had recorded and considered the applicant's statements. The IO has averred that she had in fact reminded the applicant that he would be bound in the future by whatever he said during the inquiry.
- B The IO further repeated the applicant's statement before the statement was confirmed. The relevant averments are re-produced again herein:

7. Pada 29-10-2019, jam 9.20 pagi saya telah menjalankan siasatan fizikal terhadap Pemohon di ibu Pejabat Polis Kontinjen, Pulau Pinang menurut seksyen 5(2) Akta tersebut. Di dalam siasatan tersebut, Pemohon telah hadir dan **Pemohon juga telah diberi peluang untuk memberikan keterangan tanpa sebarang paksaan.**

...

- D 10. Semasa siasatan, saya telah bertanya kepada Pemohon sama ada Pemohon mengetahui tujuan siasatan ini dilakukan. Pemohon telah memaklumkan kepada saya bahawa Pemohon mengetahui tujuan siasatan ini dilakukan. *Walaupun bagaimanapun, saya tetap menerangkan kepada Pemohon bahawa tujuan siasatan ini dijalankan untuk mendapatkan keterangan daripada Pemohon sendiri, berkenaan pertuduhan yang dibuat ke atas Pemohon berdasarkan seksyen 5(2) dan 5(3) Akta tersebut. Saya juga telah menerangkan keterangan yang Pemohon berikan dalam siasatan ini akan mengikat Pemohon pada masa akan datang. Pemohon juga telah menyatakan akan memberi keterangan dengan rela hati dan tanpa sebarang ugutan dan paksaan. Saya juga sesungguhnya menegaskan bahawa setelah selesai mengambil keterangan Pemohon, saya telah memaklumkan semula keterangan Pemohon kepada Pemohon dalam Bahasa Malaysia. Pemohon kemudiannya memaklumkan kepada saya bahawa Pemohon memahami dan mengesahkan semua keterangan yang telah dimaklumkan kepada Pemohon. Sepanjang masa siasatan tersebut, Pemohon telah diberi peluang untuk memberikan keterangan tanpa menggunakan sebarang ugutan dan paksaan.* (emphasis added)
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- F

- [39] It is clear from the facts stated by the IO in her affidavit, the applicant's averment that he did give a statement to the IO is therefore true.
- G The IO had in fact exercised her discretion to procure and receive evidence in writing from the appellant. This court cannot disagree with the applicant's learned counsel's argument that despite the averments by the IO, the respondents have attempted to take a muddled and confusing approach to the nature of the applicant's statement recorded during the inquiry proceedings and have relied on this to neutralise and/or deny the legal effect of the applicant's letters/exh. "MF1". It is the finding of this court that the applicant's recorded statement does exist and the same is in the possession of the IO and/or respondents.

I

[40] The second argument by the respondents is that there is no such requirement under s. 9 of the Act for the recorded statement to be supplied to the applicant. The respondents take the position that this case is distinguishable with the facts and findings of the Federal Court in *Chua Kian Voon* since in that case, the recorded statement of the applicant therein and referred to by the Federal Court was statement taken by the police investigating officer under s. 4 of the Act and not statement recorded by the inquiry officer of the Home Ministry under s. 5 of the Act.

[41] The provision of s. 9(2)(b)(iii) of the Act allows for the applicant to be furnished “with a statement in writing of such other particulars, if any, he may in the opinion of the Minister reasonably require in order to make his representations against the order to the Advisory Board”. Therefore, the respondent’s argument that there is no requirement under s. 9 of the Act for the applicant’s statement to be supplied cannot stand. In the applicant’s matter herein, an application was in fact made by the applicant to the Minister but the position taken or the opinion of the Minister is nowhere to be found.

[42] In *Chua Kian Voon* the Federal Court made the following findings:

[50] Further to our above conclusion, we found no merit in the respondents’ contention that there is no legal requirement on them to provide the appellant with his recorded statement. We were equally perplexed by the conclusion of the court below that the appellant was unable to fortify his argument by failing to append a copy of his recorded statement to prove that the time was not stated. The perplexity becomes apparent if we ask the question: how is someone to append proof that a document is defective if, in the first place, he is not supplied with it?

[51] *There is nothing in the 1985 Act (apart from s. 14), expressly enabling the respondents the right to withhold the recorded statement from the appellant.* For clarity, we analogously referred to s. 113 of the Criminal Procedure Code. Section 113(1) expressly stipulates that no statement made by any person to a police officer in the course of a police investigation made under the relevant chapter of the Code shall be used in evidence. That is the general rule. The rest of the said s. 113 stipulates situations when such a recorded statement may be admissible. Most notably, s. 113(3) expressly requires that where the accused had made a statement during the course of a police investigation, such statement may be admitted in evidence in support of his defence during the course of the trial.

[52] *The concept of fair trial necessitates the observance of the “equality of arms” principle that each party must be afforded a reasonable opportunity to present his or her case and that such person not be placed at a disadvantage vis-à-vis his opponent.* In support of that proposition, we refer to the decision of the High Court in *PP v. Mohd Fazil Awaludin* [2009] 2 CLJ 862; [2009] 8 MLJ 579, at para. [12] which decision was subsequently cited with approval by

- A this court in *Dato' Seri Anwar Ibrahim v. PP* [2010] 4 CLJ 265; [2010] 2 MLJ 312. While the said cases related generally to ordinary criminal proceedings, we see no reason why the same principle ought not to apply with equal force to *habeas corpus* proceedings. We held a similar view in our most recent judgment on this subject in *Mohammad Azanul Haqimi Tuan Ahmad Azahari v. Timbalan Menteri Dalam Negeri, Malaysia & Ors*
- B [2019] 8 CLJ 465, at para. [18], that laws which deprive a subject of his right to personal liberty ought to be accorded the same strict construction as penal laws.

(emphasis added)

- C [43] This court on 12 February 2019 in its decision in the case of *Poa Jac Ky v. Deputy Home Minister* (Criminal Application No: BA-44-234-08-2019) had followed the decision in *Chua Kian Voon* and its judgment stated as follows:

- D [57] Based on the decision of the Federal Court in the above case, it is therefore clear that the applicant's right to be supplied with his own recorded statement must be honoured and complied with. In the instant case, there is no credible or valid reason as to why the applicant cannot be supplied with his own statement when the request was made by the applicant to the Deputy Minister pursuant to section 9(2)(b)(iii) of the Act via letter dated 8.8.2019 (exhibit PJK-4). No reason was given by the Inquiry officer responsible for recording the applicant's statement to justify the withholding of the applicant's own recorded statement.
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[58] ...

[59] ...

- F [60] It is further highlighted to this court that when the applicant requested for a copy of his own recorded statement taken pursuant to section 4 of the Act, the respondents had willingly provided the same to the applicant even though the same was marked "RAHSIA". By virtue of the decision of the Federal Court in *Chua Kian Voon* (*supra*), this court finds the applicant has been denied of his rights to prepare and present a full and proper representation to the Advisory Board as provided by
- G Article 151(1) (a) of the Federal Constitution to be supplied with his own recorded statement whether the same be recorded under section 4 or section 5 of the Act.

- H [44] There exists a legal obligation for the first respondent to consider and grant an application made by a detenu under the Act to be furnished with a copy of his own recorded statement taken by an IO in the course of the inquiry conducted under the Act.

- I [45] The Federal Court in *Mohammad Azanul Haqimi Tuan Ahmad Azhari v. Timbalan Menteri Dalam Negeri* [2019] 8 CLJ 465 found that the failure of the respondents to disclose the minutes of the Board hearing which could lend support to the applicant's averments, amounts to a wilful withholding

of material evidence and attracts adverse inference favourable to the appellant and adverse inference against the respondent. The Federal Court stated in the followings:

[21] Since the burden to justify the detention lies on the respondents, we considered their failure to adduce the said minutes amounted to a wilful withholding of material evidence. Thus, to us, this case not only called for an inference favourable to the appellant, it also called for an adverse inference against the respondents. Simply, we presumed that had the respondents adduced the contents of the minutes of the Board hearing, the contents of those minutes would have been unfavourable to them. See generally: s. 114(g) of the Evidence Act 1950 and the judgment of this court in *Takako Sakao v. Ng Pek Yuen & Anor* [2010] 1 CLJ 381; [2009] 6 MLJ 751 where at para. 5 Gopal Sri Ram FCJ held as follows:

Where, as here, the first respondent being a party to the action provides no reasons as to why she did not care to give evidence the court will normally draw an adverse inference.

See *Guthrie Sdn Bhd v. Trans-Malaysian Leasing Corp Bhd* [1991] 1 CLJ (Rep) 155; [1991] 1 MLJ 33. See also *Jaafar bin Shaari & Anor (suing as Administrators of the Estate of Shofiah bte Ahmad, deceased) v. Tan Lip Eng & Anor* [1997] 4 CLJ 509; [1997] 3 MLJ 693 ...

In *Wisniewski v. Central Manchester Health Authority* [1998] P1QR 324, Brooke LJ when delivering the judgment of the Court of Appeal quoted from a number of authorities including the following passage from the speech of Lord Diplock in *Herrington v. British Railways Board* [1972] AC 877:

The appellants, who are a public corporation, elected to call no witnesses, thus depriving the court of any positive evidence as to whether the condition of the fence and the adjacent terrain had been noticed by any particular servant of theirs or as to what he or any other of their servants either thought or did about it. This is a legitimate tactical move under our adversarial system of litigation. But a defendant who adopts it cannot complain if the court draws from the facts which have been disclosed all reasonable inferences as to what are the facts which the defendant has chosen to withhold.

Brooke LJ then went on to say this:

From this line of authority I derive the following principles in the context of the present case:

(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.

(2) If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.

- A (3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.
- B (4) If the reason for the witness's absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified.
- C [22] Granted that *Takako* was a civil case and that it dealt with the failure to call a material witness, we think the general effect of drawing an adverse inference was lucidly explained and that it is of universal application. We considered it applicable in the context of the present case.
- D [23] The court below appeared to have faulted the appellant for not explaining why he needed the second adjournment. We thus arrived at the view that the learned Judicial Commissioner failed to appreciate the legal principles borne out in *Tangakaliswaran (supra)*.
- [24] The learned Judicial Commissioner ought to have resolved the conflict in the evidence in favour of the appellant. In any event, the material evidence capable of corroborating the respondents' version was within their control, yet they did not see it fit to produce it.
- E [46] On the first issue, this court finds that the applicant had successfully challenged the validity of the detention order against him and there exists non-compliance to the mandatory procedure provided by the Act and the Federal Constitution.
- F **The Second Issue**
Summary Of The Applicant's Submission
- G [47] It is the applicant's contention that the detention order juxtaposed with the allegation of facts does not comply with art. 149 of the Federal Constitution read together with the preamble of the Act *to wit*, it fails to show and/or allege that the applicant is part of a "substantial body of persons" or that the applicant was involved in a "syndicated" drug trafficking ring.
- Summary Of The Respondents' Submission*
- H [48] The respondents take the position that there is nothing in the preamble to the Act stating that the related act of the trafficking in dangerous drugs must be committed in a substantial body of persons only. It is argued that instead, the purpose of the preamble to the Act is to detain a person who has connection with activities relating to or involving with the act of trafficking in dangerous drugs whereby the act of the person is similar to a threat of a
- I substantial body in and outside Malaysia.

[49] The Federal Court's decision in *Danaharta Urus Sdn Bhd v. Kekatong Sdn Bhd* [2004] 1 CLJ 701 is cited where the court stated that it is settled law that a preamble may not be used as an aid to interpret a provision in a statute which is clear and unambiguous.

[50] In addition to the above, the respondents argued that from the applicant's statement recorded by the police investigating officer, the applicant admitted that he obtained the supply of the drugs methamphetamine from a few local drugs suppliers. The applicant's statement is exhibited in the affidavit of Deputy Superintendent of Police Zainal Asmawi bin Hasan the head of the Writ of *Habeas Corpus* Unit in the Police Headquarters Bukit Aman. The respondents argue that it cannot be disputed that the IO has received the investigation report including the applicant's statement. The IO had prepared her report based on the police investigation report including the applicant's statement and had forwarded her report to the Minister. It is submitted that therefore the Minister in issuing the detention order must have taken into account the fact that the applicant was associated with a substantial body of persons in the trafficking of dangerous drugs based on the IO's report which would have included the admission by the applicant *via* his recorded statement.

Findings

[51] The preamble to the Act is worded as follows:

An Act to provide for the preventive detention of persons associated with any activity relating to or involving the trafficking in dangerous drugs.

WHEREAS action which is prejudicial to public order in Malaysia has been taken and further similar action is being threatened by a substantial body of persons both inside and outside Malaysia;

AND WHEREAS Parliament considers it necessary to stop such action;

NOW, THEREFORE, pursuant to Article 149 of the Constitution BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

[52] Article 149 of the Federal Constitution provides:

149(1) If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation:

- (a) to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property; or
- (b) to excite disaffection against the Yang di-Pertuan Agong or any Government in the Federation; or

- A (c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence; or
- (d) to procure the alteration, otherwise than by lawful means, of anything by law established; or
- B (e) which is prejudicial to the maintenance or the functioning of any supply or service to the public or any class of the public in the Federation or any part thereof; or
- (f) which is prejudicial to public order in, or the security of, the Federation or any part thereof, any provision of that law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any of the provisions of Article 5, 9, 10 or 13, or would apart from this Article be outside the legislative power of Parliament; and Article 79 shall not apply to a Bill for such an Act or any amendment to such a Bill.
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- D (2) A law containing such a recital as is mentioned in Clause (1) shall, if not sooner repealed, cease to have effect if resolutions are passed by both Houses of Parliament annulling such law, but without prejudice to anything previously done by virtue thereof or to the power of Parliament to make a new law under this Article.
- E [53] It is apposite to note that pursuant to s. 15 of the Interpretation Acts 1948 and 1967 (“the Acts”), short title, preamble and long title to a statute have effect as part of the statute or subsidiary legislation. Such is the position after s. 15 of the Acts was amended and came into force after 24 July 1997. Section 15 of the Acts stipulates:
- 15 Long title, preamble and schedules
- F The long title and preamble and every schedule (together with any note or table annexed to the schedules) to an Act or to any subsidiary legislation shall be construed and have effect as part of the Act or subsidiary legislation.
- G [54] The wordings “and further similar action is being threatened by a substantial body of persons both inside and outside Malaysia” in the preamble indicate that the Act was enacted to safeguard public order from the threat of drug traffickers made up of a substantial body of persons operating in the trafficking of dangerous drugs. Activities of a single person in the trafficking of dangerous drugs cannot be deemed to be within the ambit of the Act. Therefore, the preventive detention allowed under the Act must be against person/persons who has been associated with a substantial body of persons in his activity relating to or involving the trafficking in dangerous drugs.
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- I [55] In the present matter, the applicant’s statement disclosed *via* the affidavit of Deputy Superintendent of Police Zainal Asmawi bin Hasan, the Head of the Writ of *Habeas Corpus* Unit in the Police Headquarters Bukit Aman, revealed that the applicant was associated with some persons in committing the drug activities. The applicant in his statement states that:

Saya mendapat bekalan dadah jenis Syabu (Methamphetamine) dalam bentuk paket seberat 25 gram dengan harga RM3000.00 dari beberapa pengedar tempatan yang dikenali dengan panggilan BOY (10) dan AH HOOI (11) di sekitar kawasan hadapan Market Bandar Baru, Air Itam, Pulau Pinang ...

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[56] However, upon scrutinising allegation of facts enclosed in the affidavit of the Deputy Minister, there is no statement or indication or manifestation as to the source of drug supply obtained by the applicant or the drug suppliers whom the applicant was involved with. In fact, from the reading of the allegation of facts, it can be gathered that the applicant was operating alone in the trafficking of dangerous drugs. The allegation of facts is reproduced:

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Pengataan-pengataan Fakta Yang Atasnya Perintah Itu Diasaskan:

1. Bahawa kamu didapati terlibat dalam aktiviti pengedaran dadah berbahaya jenis Heroin dan dadah jenis Syabu yang mengandungi dadah berbahaya jenis Methamphetamine sejak bulan Januari 2017 hingga bulan September 2019 secara tidak berterusan di sekitar kawasan Flat Mutiara Idaman, Jelutong, Pulau Pinang dan sekitar kawasan Ocean View, Lembah Sungai Pinang, Georgetown, Pulau Pinang.
2. Bahawa kamu didapati menjual dadah berbahaya jenis Heroin dalam bentuk peket (anggaran berat 7.0 gram sepeket) berharga RM140.00.
3. Bahawa kamu didapati menjual dadah jenis Syabu yang mengandungi dadah berbahaya jenis Methamphetamine dalam bentuk peket (anggaran berat 0.3 gram hingga 6.0 gram sepeket) berharga RM30.00 hingga RM500.00.

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[57] It is of the considered view that since activities of a single person cannot be deemed to be within the ambit and scope under the Act, the allegation of facts falls short of the pre-requisite stipulated under art. 149 of the Federal Constitution read together with the preamble of the Act since the detention order and allegation of facts, *ex facie* do not reflect that the applicant was involved with “a substantial body of persons” or that the applicant was involved in a syndicated drug trafficking ring.

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[58] The applicant must be notified that his detention is due to his activities of trafficking in dangerous drugs and his association with a substantial body of persons in carrying out such activities. It is perplexing when on the one hand, the applicant’s statement reveals the involvement of some other persons in the form of some local suppliers, and yet the allegation of facts is inconspicuous as to the association of the applicant with a substantial body of persons in carrying his activities of trafficking in dangerous drugs as required under the law for preventive detention. The question arose whether the Minister, in exercising his discretion in issuing the detention order had

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A in fact ascertained the applicant's association with a substantial body of persons to justify the detention order under the Act. The allegation of facts is *ex facie* defective due to non-compliance with art. 149 of the Federal Constitution read together with the preamble of the Act.

Conclusion

B [59] The applicant has succeeded in challenging the validity of the detention order against him and in light of the failures found and enumerated in the above, it is the finding of this court that there exists non-compliance to the mandatory procedure and pre-requisite provided by the Act and the Federal Constitution. The respondents are unable to meet its burden to satisfy the requirements of the law. The applicant's detention is unlawful.

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[60] This court had accordingly issued a writ of *habeas corpus* and ordered the applicant be released forthwith.

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